

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DANIEL DUNCAN,

Plaintiff,

-against-

Police Officer MAGED IBRAHIM, Shield No. 27154; Lieutenant MICHAEL MCKENZIE; and JOHN and JANE DOE 1 through 10, individually and in their official capacities (the names John and Jane Doe being fictitious, as the true names are presently unknown),

Defendants.

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**FIRST AMENDED
COMPLAINT**

Jury Trial Demanded

13 CV 4695 (CBA) (VMS)

NATURE OF THE ACTION

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

JURY DEMAND

5. Plaintiff demands a trial by jury in this action.

PARTIES

6. Plaintiff Daniel Duncan (“plaintiff” or “Mr. Duncan”) is a resident of Kings County in the City and State of New York.

7. Defendant Police Officer Maged Ibrahim, Shield No. 27154 (“Ibrahim”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Ibrahim is sued in his individual and official capacities.

8. Defendant Lieutenant Michael McKenzie (“McKenzie”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant McKenzie is sued in his individual and official capacities.

9. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

10. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of the City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

11. At all times relevant herein, all individual defendants were acting under color of state law.

STATEMENT OF FACTS

12. At approximately 10:45 p.m. on April 6, 2013, Mr. Duncan was lawfully present in the vicinity of Dean Street and Rockaway Avenue in Brooklyn, New York.

13. Mr. Duncan was walking with his brother and cousins when the defendants unlawfully stopped them.

14. Without cause or justification, one of the defendants grabbed Mr. Duncan aggressively and demanded his identification.

15. Mr. Duncan explained to the officer, in sum and substance, that he had done nothing wrong, and requested a supervisor.

16. Mr. Duncan provided his identification to the officers and one of the officers took out handcuffs.

17. Mr. Duncan asked, in sum and substance, why he was being arrested when he had done nothing wrong.

18. In response, after attempting to trip him, one of the officers extended his metal baton and struck Mr. Duncan in the ankle twice, causing him to suffer severe pain and injury.

19. The officers then handcuffed Mr. Duncan, falsely arrested him and took him to a police precinct.

20. At the precinct the officers falsely informed employees of the Kings County District Attorney's Office that they had observed plaintiff engage in disorderly conduct, obstruct governmental administration, consume alcohol in public and resist arrest and prepared false paperwork to this effect, including an arrest report.

21. At no point did the officers observe plaintiff commit any crime or offense.

22. The defendants refused to provide Mr. Duncan with medical treatment, even though his need for it was obvious.

23. Mr. Duncan was taken to Brooklyn Central Booking, where an EMT observed his injuries and called an ambulance to take him to Brooklyn Hospital.

24. Mr. Duncan was then taken back to Brooklyn Central Booking and arraigned.

25. After spending approximately 20 hours in custody, Mr. Duncan was released on his own recognizance.

26. The criminal charges against Mr. Duncan were subsequently adjourned in contemplation of dismissal.

27. Mr. Duncan has required additional medical treatment for the injuries he suffered during the incident.

28. Mr. Duncan suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, fear, pain,

bodily injury, anxiety, embarrassment, humiliation, lost wages and damage to his reputation.

FIRST CLAIM
Unlawful Stop and Search

29. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

30. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched plaintiff without reasonable suspicion.

31. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages herein before alleged.

SECOND CLAIM
False Arrest

32. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

33. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

34. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

THIRD CLAIM
Unreasonable Force

35. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

36. The defendants violated the Fourth and Fourteenth Amendments because they used unreasonable force on plaintiff.

37. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

FOURTH CLAIM
Denial Of Constitutional Right To Fair Trial

38. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

39. The individual defendants created false evidence against plaintiff.

40. The individual defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

41. In creating false evidence against plaintiff, and in forwarding false information to prosecutors, the individual defendants violated plaintiff's right to a fair trial under the Due Process Clause of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

42. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

FIFTH CLAIM
Deliberate Indifference to Medical Needs

43. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

44. The individual defendants were aware of plaintiff's need for medical care and failed to act, in deliberate indifference to plaintiff's needs.

45. Accordingly, defendants violated the Fourteenth Amendment because they acted with deliberate indifference to plaintiff's medical needs.

46. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

SIXTH CLAIM
Failure To Intervene

47. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

48. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

49. Accordingly, the defendants who failed to intervene violated the Fourth, Fifth, Sixth and Fourteenth Amendments.

50. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against the individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

Dated: April 21, 2014
New York, New York

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